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PACE LAW REVIEW

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Lecture

Why is it So Hard to Negotiate with the Russians?*

Eugene V. Rostow†

My assignment is to explain why it is so difficult to negotiate arms control agreements with the Soviet Union. In short, I am expected to solve Churchill's famous "riddle wrapped in an enigma"¹ within the lecturer's standard fifty minutes — or, preferably, less. I should start with a disclaimer. One of the best of our State Department Soviet experts, Ambassador Charles Bohlen,² used to say there were two classes of people he knew were lying — people who said whiskey didn't affect them, and those who claimed they knew how to negotiate with the Rus-

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1. Radio broadcast of October 1, 1939, in which Churchill said, "I cannot forecast to you the action of Russia. It is a riddle wrapped in a mystery inside an enigma."

2. Charles Eustis Bohlen (1904-1974) joined the Foreign Service in 1927 and received his early training in Soviet affairs; he served in the Moscow Embassy in 1934-1935 and again from 1938-1941. In the course of his career, Bohlen was Ambassador to the Soviet Union, France, and the Philippines, and served as counsellor to the Secretary of State, chiefly as Adviser on Soviet affairs.

sians. I shall try to carry out my duty tonight with full respect for Ambassador Bohlen's admonition.

There is a vast and arcane literature on the difficulties of negotiating with the Soviet Union, and particularly on the difficulties of negotiating arms control agreements.

One branch of that literature concentrates on the Russian character and personality, and the special pressures on the Russian personality arising from the nature of the Soviet regime. Some writers of this school tell us that Russians are inscrutable Orientals, products of a mysterious culture we can never expect to understand. Others rely on the wily peasant hypothesis — that, at heart, Soviet diplomats are cunning Russian peasants whose natural negotiating style is that of a peasant trying to cheat his customers at a country market. Others still, with varying degrees of learning and insight, cite travellers to Russia since the sixteenth century who described Russians as inveterate liars, with a hazy sense at best of the difference between truth and falsehood. In the late 1940's, Gunnar Myrdal, the Swedish economist and sociologist, predicted that we and the British would make a mess of our diplomacy with the Russians, because we would assume that Russians are gentlemen and make agreements which they would have no intention of carrying out. "What you can't believe," Myrdal said, "is what every Swede knows in his bones. The Russian culture is not a gentleman culture."

Another branch of the literature about negotiating with Russians focuses on our diplomatic experience, especially in the negotiation of the SALT I and SALT II agreements,³ and the

3. SALT (Strategic Arms Limitations Talks) refers to the negotiating process between the United States and the Soviet Union aimed at limiting strategic weapons. SALT I, the first round of negotiations, began in 1969 and resulted in the signing of the Treaty on the Limitation of Anti-Ballistic Missile Systems (ABM Treaty) and the Interim Offensive Arms Agreement in 1972. In undertaking these agreements, the Soviet Union and the United States committed themselves to continue active negotiations on the limitation of strategic offensive weapons and to bring the arms race to an end.

The negotiation of the SALT II agreement began in November, 1972, and culminated in June, 1979, with the signing of the SALT II documents. The lengthy and complex SALT II documents include the Treaty text, a Protocol, a summary of agreed statements and common understandings relating to interpretation of the Treaty, and reports on the number of weapons in various categories deployed by each side. President Carter asked the Senate not to give its advice and consent to the ratification of SALT II on January 3, 1980, after lengthy and controversial hearings had been held by two Sen-

nuclear arms negotiations between 1981 and 1983. These books and articles tend to have apocalyptic titles like *Cold Dawn*,⁴ *Endgame*,⁵ *Doubletalk*,⁶ and *Deadly Gambits*.⁷ Almost without exception, their thesis is that it is all our fault. The Soviets are presented as Noble Savages, innocent and rather unsophisticated voyagers from a distant planet which has been overrun innumerable times in the course of history by bloodthirsty invaders from the East, the West, and the South. As a result, we are told, Russians are preternaturally suspicious of foreigners, but kind and generous at heart, and eager to reach fair and balanced agreements with the West. If only we were more sympathetic to the natural anxieties of the Russians, more tolerant of traits and habits which writers of this school ascribe to a Russian sense of inferiority toward the West, and more ingenious and imaginative as negotiators, we should have long since sealed true detente, perhaps even genuine peace with the Soviet Union through arms control agreements which exorcise the nightmare of nuclear war, and allow the two social systems to "coexist" in peace.

As you will have gathered by now, I am skeptical about both branches of the literature as guides to our problems of living with the Russians. There is something to be learned from these books and articles, but not a great deal. Some are entertaining, others are dull. Of course the Russian culture is a strong and distinct entity, not to be confused with the cultures of France, China, the United States or any other country or groups of countries. And of course we should do our best to understand the Russian culture, both for our own sakes, and as preparation for the essential task of peaceful coexistence with the Soviet Union in our sense of that slippery term. The Russians are not savages, noble or otherwise, but a gifted people who have made an extraordinarily rich contribution to Western literature, art, music, and learning during the last three centuries. Their moral and religious life has deep roots, and abiding power. They are no more addicted than other people to lying, cheating, and like sins;

ate Committees. 38 CONG. Q. 3 (Jan. 5, 1980).

4. JOHN NEWHOUSE, *COLD DAWN: THE STORY OF SALT* (1973).

5. STROBE TALBOTT, *ENDGAME: THE INSIDE STORY OF SALT II* (1979).

6. GERARD SMITH, *DOUBLETALK: THE STORY OF THE FIRST STRATEGIC ARMS LIMITATIONS TALKS* (1980).

7. STROBE TALBOTT, *DEADLY GAMBITS* (1984).

and there are as many ladies and gentlemen among them as is the case with people of Western Europe and the United States. No doubt the travellers' tales are true, within the usual limits, but they only confirm the obvious — that all cultures are different, but also have much in common.

I have known Russians all my life, and I have known and worked with Soviet diplomats for a good many years. Many Soviet diplomats, like other Russians, are cultivated and agreeable men and women, good companions and reliable colleagues. Soviet diplomats are serious professionals — intelligent, well-educated, and well-trained. A good many share the views one often finds among Soviet students in this country or in Europe — the characteristic attitudes of the Russian intelligentsia before 1914 so well described in *Fathers and Sons*⁸ and the essays of Sir Isaiah Berlin.⁹ The old-fashioned Russian intellectuals did not suffer from inferiority complexes. Neither does the new crop. On the contrary, they look down on Western and, particularly on American intellectuals as badly educated and hopelessly naive.

Governmental policy, however, is not made by people, whether peasants or intellectuals, but by governments. And the Soviet Government is an institution of a most particular character. It is, of course, a dictatorship controlled by the Communist Party of the Soviet Union, which evolved as a revolutionary and conspiratorial schismatic group within the Socialist movement of the last century. Forged in bitter and often violent underground struggles, its outlook has been and remains that of a guerilla commando, equally at war with established authority and with Socialist heterodoxy. It regards itself as the chosen instrument of the true faith, whose mission is to fulfill the apostolic prophecies of Marx and Lenin. The Party now includes not only the few who still believe in its professed creed, but also careerists, power-addicts, thugs, lovers of money and privilege, and other members of what Djilas¹⁰ called the New Class, and Russians

8. IVAN TURGENEV, *FATHERS AND SONS* (1861) (dealing with nihilist philosophy and personal and social rebellion).

9. In dealing with the phenomenon of the Russian intelligentsia, English political scientist Sir Isaiah Berlin was concerned with the social and moral questions which the intelligentsia posed and the dilemmas that they sought to resolve. ISAIAH BERLIN, *RUSSIAN THINKERS* 114-35 (1978).

10. MILOVAN DJILAS, *NEW CLASS* (1957). Djilas, a former Yugoslav government and

call the "Nomeklatura". It is not surprising that a government dominated by such a group is difficult to deal with. There is no way of dealing with it unless one understands not only Russian history and the Russian high culture of Tolstoy, Turgenev, and Dostoyevsky, but the history of the Soviet Union and the low culture so brilliantly and powerfully revealed by Solzhenitsyn, Sinyavsky, and other great Russian prophets of our time.

My answer to the question before us tonight, namely, why is it so difficult to reach arms control agreements with the Soviet Union, and particularly agreements about nuclear arms, is that Soviet and Western objectives in these negotiations are incompatible. The obstacles to agreements we could and should accept are not based on misunderstandings and cannot be cured by dialogue, vodka, ingenuity in drafting, or prolonged walks in the woods. I strongly favor civil and companionable relations between the Soviet and Western citizens at many levels, personal and official. Over the years I have done my best to further the national interests of the United States by consuming vast amounts of food and drink with Soviet guests, hosts, and other interlocutors. Such contacts are educational and worthwhile, but we should never confuse ourselves by supposing that they lead to peace. Soviet and American officials understand each other's government about as well as people ever understand the dynamics of a foreign society and government — that is to say, not very well. What has made arms control agreements and the arms control process so problematical, however, is far deeper and more intractable than simple ignorance, the occasional lunacy of American bureaucracy or politics, and the prevalence of folly, especially in the government of the United States.

Without ever being explicit about it, Soviet diplomats expect their opposite numbers to understand the circumstances under which Soviet officials live and work. If a Western negotiator has a reasonable familiarity with Russian culture, a clear sense of the nature of Soviet society, and a modicum of empathy, negotiating with Soviet diplomats is not notably more difficult than other forms of serious negotiation. In cases where the

Communist party official, was a life-long Communist whose systematic and Marxian critique of Soviet society and party officials as a new ruling class led to years of imprisonment.

interests of the Soviet Union and the United States are identical, or close to being identical, it is often easy to reach an agreement. If the gap between the two sides is not great, and the Soviet stake in having an agreement is strong, it is usually not too difficult to find an accommodation. For example, it is not hard to sell grain to the Soviet Union when it wants to buy grain, or to find common ground on the basic ideas of the law of the sea, since both the Soviet Union and the United States are maritime powers and have the same opinions about the international character of straits and canals. The Non-Proliferation Treaty of 1967¹¹ was quickly achieved, because both sides have the same interest in keeping the nuclear club small, or at least they both think they do. But where the subject matter of the negotiation touches the fundamental purposes of Soviet foreign policy, the negotiating problem is altogether different, and has thus far proved insoluble. It is, in fact, a misnomer to call such an encounter a negotiation in any sense. It is a problem in conflict, and can be resolved only by deploying the manifest reality of unacceptable risk. On issues such as these, issues which touch the nerve of sovereignty, negotiating with the Soviet Union is a bracing sport — very bracing indeed. Sir William Hayter, who served with distinction as British Ambassador to Moscow, once remarked that negotiating with the Soviet Union on topics of this order was like dealing with a recalcitrant vending machine. Sometimes it helped to put in another coin. Occasionally, it was useful to shake the machine, or to kick it. But the one procedure which never did any good was to talk to it. As Dean Acheson¹² once said, one should never negotiate with the Soviet Union unless one is willing to come home without an agreement.

11. The Non-Proliferation Treaty (NPT) has been signed by more than 110 countries. Under its terms, nations that do not already have nuclear weapons promise not to try to develop them. In return, those nations get help from countries like the United States and the Soviet Union in setting up nuclear plants for peaceful purposes.

12. Dean Acheson (1893-1971) served as Secretary of State from 1949 to 1953 as well as advisor to four Presidents. Following World War II, he was the principal creator of U.S. foreign policy, helping to create the NATO alliance in opposition to the Soviet Union and other communist nations.

II.

This is an aspect of modern life we find extremely difficult to accept. For a number of reasons, many people in the West, and more particularly in the United States, Canada, Great Britain, Scandinavia, and the Netherlands have a strong emotional need to resist the obvious fact that the Soviet Union and the United States have completely different objectives in foreign policy and, therefore, completely different objectives in arms control negotiations. The United States and its allies are not interested in conquest, but in security. Their ambition is to achieve an open state system of cooperating free states, living in accordance with the rules of international law. The Soviet Union, however, is embarked on a policy of indefinite expansion fuelled by the practice of open aggression. The Western nations look to their nuclear arsenals as an aspect of defense, a deterrent against aggression, and to arms control agreements as an assurance of the capacity of each side to sustain deterrence, predictability, and stability in a changing military environment — in short, as a means of deterring aggression by achieving and maintaining nuclear stalemate. For the Soviet Union, on the other hand, the goal of their nuclear arsenal is to demonstrate a plausible first strike capacity. Without ever firing a nuclear weapon, they are convinced they could use such an arsenal as the ultimate tool of aggression — as an intimidating sanction behind their program of indefinite expansion preventing any American response to their aggressive use of conventional force, terrorism, and subversion against Third World countries, Communist countries, and peripheral members of the Western camp. For Soviet diplomacy, therefore, the goal of nuclear arms negotiations is to make it possible for the Soviet Union to enhance and consolidate its first strike capacity, and to deny the United States a deterrent capacity based on the threat of retaliation. Facing such a challenge, they believe, the United States would have no choice but to remain neutral. The Soviet leaders conduct their campaign of expansion with some prudence, so as not to arouse us abruptly. But their psychology is that of men at war.

The earnest Western campaigners for unilateral Western disarmament deny these features of reality. They prefer to talk about the tension between the Soviet Union and the United

States as "great power rivalry" based on "mutual mistrust," and pass resolutions urging Soviet-American summit meetings.

It is seriously misleading to speak of the Soviet-American relationship as if it were a normal and inevitable feature of international politics like the rivalry of the two biggest boys in a school playground at recess. Such a view puts the two countries on the same moral plane and treats their interests as equally legitimate. But the aggressor and his victim do not stand on the same moral, political, and legal plane. Their interests are not equally legitimate. And as a practical matter, the refusal to confront the profound differences between the foreign policies of the United States and the Soviet Union leads to all sorts of error and naïveté in the formulation of Western policies. As President Johnson once said about a Solon of his day, "that fellow would find an excuse for them if they landed in Mexico."

The nature of the tension between the Soviet Union and the rest of the world is a question with which humanity has been struggling since the Bolshevik Revolution of 1917.¹³ It is an intensely troubling question for people of the Western tradition, involving passionate loyalties, poignant memories, and noble dreams. But the answer to the question is no longer in doubt. The Soviet Union is in the imperial mood of the seventeenth and eighteenth centuries, as a distinguished British historian has remarked — the imperial mood which the peoples and governments of the West have long since given up with relief. And the Soviet thrust for empire now threatens the state system which has evolved through trial and error since the end of the Napoleonic Wars. The state system of the nineteenth century collapsed in 1914 and was rebuilt within the framework of the League of Nations¹⁴ after the First World War; it collapsed again in the 1930's, and was again reformed and reestablished, this time

13. The "Great October Revolution" occurred on November 8, 1917, when Bolshevik-led soldiers stormed the weakly defended Winter Palace in Petrograd; the violent upheaval overthrew the Czarist government and was the beginning of the Russian Revolution.

14. The purpose of the League of Nations, as conceived by Woodrow Wilson, was to "afford mutual guarantees of political independence and territorial integrity to great and small states alike." Address of President Woodrow Wilson, 65th Cong., 2d Sess. (January 18, 1918).

under the Charter of the United Nations in 1945.¹⁵ Now the Charter is going the way of the Covenant of the League.

The contemporary state system is on a different scale from the Eurocentered system of the nineteenth and early twentieth centuries. The old European Empires, save only the Russian, have dissolved into nearly 100 independent states. Rule by a Communist Party, established in Russia in 1917, has now been extended to a dozen or more states, and the Soviet Union is pursuing an active program of expansion. The vast realm of Islam is undergoing transformations peculiar to itself. And the United States, China, and Japan have emerged as major participants both in world politics and in the affairs of the integrated and progressive capitalist world economy. It is no wonder that the state system has been buffeted by the strains of adapting to these immense flows of change. The process of adaptation has been conducted with considerable success, but it is now threatened by the accelerating spread of the practice of aggression.

The root of the matter is that the Soviet Union has never accepted Article 2(4) of the United Nations Charter¹⁶ as applicable to it. That Article categorically condemns the international use of force — “force,” it should be noted, not “armed force” alone — against the territorial integrity or political independence of a state, except where justified by the inherent and historic right of individual or collective self-defense, which is not qualified in any way by the Charter.

The enforcement of these rules is the chief function of the Security Council,¹⁷ which, on paper at least, has far more authority than any institution of the League. Its nominal power recalls that which Palmerston, Disraeli, and Bismarck exercised in fact during some of the diplomatic Congresses of the nine-

15. The Charter of the United Nations also provides for the “sovereign equality of all its Members.” U.N. CHARTER art. 2, para. 1; the one exception to this is the Security Council. See *infra* note 17 and accompanying text.

16. “All Members shall refrain in their international relations from the threat or use of force against the territorial integrity or political independence of any state, or in any other manner inconsistent with the Purposes of the United Nations.” U.N. CHARTER art. 2, para. 4.

17. See U.N. CHARTER arts. 23-54, 75-85, for specific powers granted to the Security Council for the discharge of their duties.

teenth century: the power to guide, direct, limit, cajole, conciliate, and, if necessary, to command and dispose of controversies which threaten the peace.

From the beginning of the Charter era, the Soviet Union has claimed for itself — and only for itself — the privilege of using force against the territorial integrity or political independence of states which are not governed by socialist regimes, and indeed of using force even against socialist states if they are under the control of socialist heretics, revisionists, or schismatics, or if they show dangerous signs of backsliding to capitalism or democracy. One of the most familiar Soviet tactics of aggression is the international use of force in support of insurrections within a state — a violation of state sovereignty that international law has condemned as war for centuries.

Since 1945, this feature of the political landscape is so familiar that we take it to be the order of nature, and assume that it has somehow been legitimized. But the special privilege of the Soviet Union to commit aggression at will cannot be legitimized under the Charter of the United Nations. Whether practiced by the Soviet Union or by any other state, aggression — including the international use of force to support revolutionary movements — violates the basic rule of the Charter system: the integrity of states.

When pressed, Soviet diplomats or scholars say that for the Motherland of Socialism to obey Article 2(4) would be to give up its nature as a society and a state. To this, the only answer an American can offer is that the Soviet Union can preach the gospel of communism as much as it likes, but that in the nature of the state system, it cannot be allowed to propagate its faith with a sword.

The Soviet program of expansion, sedulously pursued since 1945, has gone too far. It threatens the most fundamental security interest of all other states — their interest in the world balance of power — and has, therefore, touched nerves of great sensitivity in countries as diverse as China, Japan, Egypt, the NATO countries, and the small nations of Southeast Asia. Unless the policy of Soviet expansion is stopped — and stopped soon — it will destroy the last vestiges of the rule against aggression that the world has struggled so hard and so long to establish. The state system cannot live by a double standard. Na-

tions do not stand idly by and allow themselves to be nibbled to death, as Adlai Stevenson remarked a generation ago. The disappearance of the rule against aggression is not a result the Western nations want. Indeed, it is a result they fear profoundly. But it will come about, inevitably, if the Soviet Union continues on its present course.

Nonetheless, the Soviet program of expansion continues unabated. Indeed it has been gaining in momentum as the Soviet armed forces have grown at an astonishing rate, both in conventional and in nuclear power. Despite the rearmament efforts of the Western powers during the last six or seven years, the Soviet Union continues to widen its lead over the United States and its allies in most of the crucial components of military power, and to reduce the few military advantages the United States still possesses.

III.

What is the purpose of the Soviet Union's prodigious military buildup? Can it be explained or excused as a defensive response to an exaggerated concern for security? Does it make conventional or nuclear war, inevitable?

As noted earlier, the goal of Soviet foreign policy is altogether different from that of the United States. The United States and the other Western states seek to restore a state system governed by the rules and principles of the United Nations Charter — a state system resting on a stable balance of power, capable of peaceful change, and scrupulous in its respect for the territorial integrity and the political independence of all states, whatever their social systems. So far as nuclear weapons are concerned, the United States has actively pursued policies that would bring nuclear technology under close international control, starting with the proposal of the Baruch Plan in 1946, and prevent the use of nuclear weapons altogether.¹⁸

18. The Baruch Plan, named for Bernard M. Baruch, the first American delegate to the Atomic Energy Commission of the United Nations, was considered bold because of the scope of its proposals. The plan provided for close international control of the entire field of atomic development all the way back to the mines. J.A. SCHWARTZ, *THE SPECULATOR* 490-507 (1981); M.V. ROSENBLUM, *BERNARD BARUCH AND A BLUEPRINT FOR SECURITY* 257-91 (1953); B. BARUCH, *THE PUBLIC YEARS* 357-82 (1960).

The Soviet Union, on the other hand, has long been engaged in a program of indefinite expansion based on the aggressive use of military power as an instrument of national policy. Conventional forces, proxy forces, terrorists, guerillas, and subversion are the direct agents used to accomplish this end. The Soviet Union relies on the silent power of its nuclear arsenal to deter any Western response to aggression carried out by such means.

The Soviet process of expansion, which has imposed a growing pressure on the state system since 1945, is the underlying cause of the tension between the Soviet Union and the United States. The arms race, the difficulties of nuclear arms negotiation, and many other disturbing phenomena of modern world politics are symptoms and consequences of that underlying cause. For many years, the United States has led coalitions of like-minded states to deter, contain, and if necessary to defeat the expansion of Soviet power brought about by the aggressive use of force. The effectiveness of those policies was weakened by the tragic experience of Korea and Vietnam. It is now being weakened by another influence — that of Soviet nuclear superiority in ground based ballistic missiles, the most accurate and devastating nuclear weapons, and the ones least vulnerable — so far — to any weapons of defense.

IV.

We have not yet fully grasped the nature of Soviet nuclear strategy. The Soviet Union recognizes the profound change which the nuclear weapon has brought about in the art of war, and, therefore, in world politics. It realizes that, for all practical purposes, Soviet nuclear weapons cannot be fired while the United States retains a convincing retaliatory capacity. It, therefore, perceives the nuclear weapon as primarily a political, not a military instrument. The Soviet leaders are not building their enormous nuclear forces in order to use them in a nuclear war. On the contrary, they are attempting to use them as the key element of a muscular diplomacy designed to exploit nuclear fear as an influence on Western policy. The Soviet government acts on the assumption that if it acquires a convincing first strike capability against the United States, American security guarantees will lose all their deterrent credibility, and the United States will retreat into isolation and neutrality. As a re-

sult the Soviet Union will dominate the Eurasian heartland without firing a shot, and, therefore, dominate Africa, the Eurasian coastlands, and islands like Japan, Great Britain, and the United States as well. People have an altogether reasonable horror of nuclear war; in the democratic world, that horror has the potential of becoming an overwhelming political force. To help make that potentiality real, the Soviet Union is conducting a campaign based on three elements: the creation of a nuclear arsenal that would make a preemptive Soviet first strike plausible; the maintenance of a public image of mindless ferocity, which would reinforce the plausibility of such a threat; and propaganda designed to transform nuclear concern into panic, and thus keep the West from taking the peaceful and effective countermeasures which are altogether within its power.

No one can guarantee that the taboo against the use of nuclear weapons which has lasted since 1945 will continue indefinitely. For the moment, at least, we can say that the risks of such a catastrophe are relatively low, and will remain low so long as two conditions are satisfied: first, that the United States retain an adequate nuclear deterrent and the solidarity of its alliance system; and second, that the world prevent widespread nuclear proliferation, especially to irrational political leaders. General nuclear proliferation would make world politics unpredictably volatile.

The major risk of nuclear war is through the escalation of conventional war. There can be no assurance that the fallible human beings who control both conventional and nuclear weapons could refrain indefinitely from using nuclear weapons under the stress of battle. It follows, therefore, that it will be impossible to eliminate the risk of nuclear war without restoring the viability of the state system, and enforcing its most important rule — the rule against aggression.

But the state system reestablished in 1945 under the Charter of the United Nations is crumbling towards anarchy. If we allow that system to disintegrate much further, the risk of general war will correspondingly increase. That risk could increase also if the shadowy rules of prudence, which have somewhat restrained Soviet and American behavior towards each other since 1945, become altogether ineffective.

These rules of prudence emerged early in the history of the

Cold War, as it became obvious that the Soviet Union was unwilling to discuss or to modify its policies of expansion. The West correspondingly decided to pursue the course of containing and deterring Soviet aggression, and defeating it when necessary, rather than eliminating the Soviet Union's capacity to commit aggression in a fundamental way.

Perhaps the most basic of these rules is that the armed forces of each side not fire at the armed forces of the other. The only exceptions to that rule so far have been the Cuban Missile Crisis of 1962, when the United States boarded and turned back a Soviet vessel bound for Cuba, and the recent murder of Major Nicholson by Soviet soldiers near Potsdam in East Germany.¹⁹ The Soviet government did not use armed force to interfere with the Allied Airlift which saved Berlin in the 1940's, or the flow of American and Allied supplies and troops to Korea and Vietnam.

In the West, some students and officials thought that there would be a second tacit rule of prudence for the conduct of the Cold War — that each side would respect certain special security interests of the other. Thus the West has refrained from interfering with the Soviet sphere of influence in Eastern Europe. It soon became clear, however, that the Soviet Union would not correspondingly refrain from attempts to take over Greece, Cuba, Iran, Turkey, and other countries we had supposed to be in the Western "sphere of influence."

Ever since the Cuban Missile Crisis of 1962, the United States has pressed the Soviet Union to accept rules that could constitute a third category of a Soviet-American code of prudence — rules that might ensure the deterrent stability of the Soviet-American nuclear balance. To our way of thinking, the Cuban Missile Crisis revealed the explosive potentialities of nuclear anxiety, and demonstrated the potential importance of un-

19. On March 24, 1985, Major Arthur Nicholson became the first uniformed American soldier to be killed by Soviet gunfire in more than two decades. The Major had the legal authority to operate behind enemy lines as part of a little-known 14-member U.S. liaison mission in Potsdam that monitors troop movements in East Germany. He had ventured too close to a restricted area to photograph the interior of a shed containing Soviet military equipment; a Soviet sentry fired three shots, one of which hit Nicholson in the chest. The Soviet soldiers on the scene did not bring medical help to Major Nicholson nor did they allow his driver to give him first-aid. *The Superpowers; A Time of Testing*, NEWSWEEK Apr. 8, 1985 at 20-22; *Cat-and-Mouse Game That Turned Deadly*, U.S. NEWS & WORLD REP., Apr. 8, 1985 at 13.

derstandings or agreements that might minimize uncertainty on each side about the nuclear forces and nuclear intentions of the other. Despite all the evidence, we have clung to the illusion that the Soviet goal in these negotiations was the same as our own.

Nuclear weapons have not been fired in war since 1945. The specter of nuclear war does not yet significantly inhibit the phenomenon of conventional and guerilla war in many parts of the Third World, which has suffered, and is suffering, terrible injury as a consequence. The Soviet Union, however, has refrained from directly attacking Western Europe, Japan, and other manifestly fundamental security interests of the United States, in part, surely because of the paralyzing uncertainty about the possibility of an American nuclear response. Nuclear warfare among the industrialized nations is unlikely if the United States retains a credible retaliatory capability as a deterrent; in the past, at least, the United States has used nuclear hints to bring wars in the Third World to a halt — in Korea, for example, and in the October, 1973, Middle Eastern War, where an American alert stopped Soviet intervention.

The arms control negotiations in Geneva bring out the differences between Soviet and American doctrines with respect to the possible use of nuclear weapons, and Soviet and American objectives in the negotiations. The key issue in this phase of the negotiations is the growing lead in ground-based ballistic missiles that we have foolishly allowed the Soviet Union to achieve since 1972. In 1972, the Soviet Union and the United States were approximately equal in the number of warheads on ground-based intercontinental ballistic missiles (ICBM), and there was no doubt about the retaliatory capacity of the United States. Today the Soviet lead is at least 3.5 to 1 with respect to warheads on ground-based intercontinental ballistic missiles, and over 4 to 1 in throw weight, the carrying capacity of the vehicles. In addition, the Soviet Union has a near monopoly in intermediate range missiles. These weapons present a growing threat to Western Europe, Japan, China, and the Middle East at a time of increasing doubt about America's capacity to defend its interest in those areas with nuclear weapons.

The immediate negotiating goal of the Soviet Union in the nuclear arms negotiations is to achieve agreements which allow it to maintain and strengthen its lead in intermediate range and

intercontinental ground-based ballistic missiles, and impose crippling limits on our nuclear arsenal. The American goal continues to be the goal of equal limits that could promote political stability.

The Soviet reasoning is brutally simple.

As the Scowcroft Commission²⁰ pointed out, "The Soviets . . . now probably possess the necessary combination of ICBM numbers, reliability, accuracy, and warhead yield to destroy almost all of the 1,047 U.S. ICBM silos, using only a portion of their own ICBM force." A Soviet first-strike capability is implicit in this Soviet posture — its ability to destroy our ICBM force, our planes on the ground, and our submarines in port with twenty-five or thirty percent of its ICBM force. When the Soviet Union's near monopoly of intermediate range ground-based ballistic missiles is taken into account, as it should be, the position of the United States becomes even worse. The plain fact now is that the Soviets have the capability to destroy a range of hardened military targets, and we do not. According to the Scowcroft Commission Report, this "one-sided strategic advantage" in ground-based ballistic missiles "casts a shadow over the calculus of Soviet risk taking at every level of confrontation with the West." We cannot safely permit that imbalance to continue. As the Scowcroft Commission said, it must "be redressed promptly." No President of the United States should ever be confronted with the choice between nuclear war and the abandonment of vital national security interests.

A Soviet first-strike capability is the heart of the Soviet plan to separate the United States from its allies in Europe, Asia, and the Middle East by means of political pressure. Stability, predictability, and deterrence cannot be restored until the Soviet first-strike capability is eliminated.

There are only three ways in which that goal can

20. On January 3, 1983, President Reagan appointed a committee to recommend new deployment options for the MX missiles after Congress rejected the administration's proposal to cluster the missiles together in hardened silos in the so-called "dense pack" basing system. Brent Scowcroft, a retired Air Force General who had served as National Security Advisor to former President Gerald Ford, was named as chairman of the panel. In contrast to earlier panels formed to evaluate MX basing modes, the new committee was composed largely of former military and government leaders rather than scientific and technical experts.

be achieved: (1) a crash American building program: MX, Midgetman, cruise missiles, Pershing II, and all; (2) the development of defensive weapons which might transform the nuclear equation by requiring eighty or ninety percent of the Soviet nuclear force to execute a first strike, rather than the twenty-five or thirty percent now required; or (3) an arms agreement with the Soviet Union based on the principle of Soviet-American deterrent retaliatory equality — the only kind of arms agreement which could preserve an unchallengeable American capacity to prevent Soviet nuclear blackmail of its national security interests.

The only significant difference between the Soviet Union and the United States in the Geneva nuclear arms talks between 1981 and 1983 concerned this crucial issue — Soviet-American equality. The United States pressed for agreements based on that principle; the Soviets adamantly refused, holding out for what they called “equality and equal security,” an Aesopian phrase which would entitle them to a force equal to the sum of all the other nuclear forces in the world. To put the matter bluntly, the Soviet goal in the negotiations was to induce the United States to acknowledge the Soviet Union’s “right” to nuclear superiority. That is why the Soviets pressed for the inclusion of British and French forces in the INF²¹ talks, although they know that those forces are no threat to the far superior Soviet arsenal, but exist for quite different national purposes. They also held out for agreements based on the principle of equal reduction, not reduction to equal levels, which was the basis for the 1922 Washington naval agreements.²² The Soviet approach in the INF²³ and START²⁴ negotiations would make the crucial Soviet advantage in ground-based ballistic missiles even bigger and more intimidating than it is now.

V.

The United States does not have much time to restore the nuclear balance on which the possibility of our having an effec-

21. Intermediate Nuclear Force.

22. Naval Armament Limitation, Feb. 6, 1922, 43 Stat. 1655, T.S. No. 671.

23. See *supra* note 21.

24. Strategic Arms Reduction Talks.

tive foreign policy depends. One of the most promising ways in which we would pursue that goal is to explore the defensive technologies which might significantly diminish the capabilities of the Soviet missile force, and, therefore, begin a major shift in Western policy from deterrence through the threat of massive nuclear retaliation to deterrence through effective defense against nuclear weapons. This is the purpose of the Strategic Defense Initiative announced by President Reagan in 1983.

President Reagan's Strategic Defense Initiative (hereinafter referred to as SDI) is a carefully considered and intellectually sound attempt to escape from the terrible dilemma of nuclear deterrence. Deterrence through the threat of nuclear annihilation has always been morally abhorrent. Moreover, it is now of declining practical utility as well, in view of the changes in the Soviet-American nuclear balance since 1972. SDI is the most promising and most idealistic nuclear initiative since the Baruch Plan was proposed by President Truman nearly forty years ago.

Both for Americans and for their allies and adversaries, SDI bristles with difficult problems that will take time, patience, extended analysis and consultation to resolve constructively. In addition, like every other major revolution, SDI has stirred up a flurry of resistance among those who resent any change in the comfortable and familiar universe of thought to which they have become accustomed.

The first thing to be said about SDI is that it is misnamed. As Professor Teller²⁵ has pointed out, it should have been called the Strategic Defense Response, because the Soviet Union has spent more money on strategic defense since 1972, when the ABM Treaty²⁶ was signed and ratified, than on offensive nuclear weapons. The United States, on the contrary, has done only minimal research in the field since 1972 and has fallen far behind the Soviet Union. President Reagan's decision to accelerate our research program in strategic defense was, therefore, inevitable, like President Franklin Roosevelt's decision to build an

25. American physicist, Edward Teller, is generally credited with the development of the world's first thermonuclear weapon, the hydrogen bomb. He has been recognized for his significant contributions to the development, use, and control of nuclear energy.

26. Limitation of Anti-Ballistic Missile Systems, May 26, 1972, United States-U.S.S.R., 23 U.S.T. 3435, T.I.A.S. No. 7503. See also *supra* note 3 and accompanying text.

atomic bomb²⁷ after a group of scientists told him that Hitler was already attempting to do so.

Second, as the Administration fully recognizes, even if the research effort should prove to be successful, the potential results of SDI will take years to realize. For the indefinite future, therefore, defensive weapons should be considered within the present framework of deterrence through the threat of retaliation. They should be considered as an alternative to a massive build-up of offensive weapons required to restore and reinforce our policy of deterrence. As Ambassador Nitze²⁸ has said,

The present situation — in which the threat of massive nuclear retaliation is the ultimate sanction, the key element of deterrence, and, thus, the basis for security and peace — is unsatisfactory. It has kept the peace for forty years, but the potential costs of a breakdown are immense and, because of continuing massive Soviet deployments of both offensive and defensive weaponry, are not becoming less. If we can, we must find a more reliable basis for security and for peace.

This concern prompted the President's decision to proceed with the Strategic Defense Initiative (SDI). He has directed the scientific community to determine if new cost-effective defensive technologies are feasible which could be introduced into force structures so as to produce a more stable strategic relationship. We envisage, if that search is successful, a cooperative effort with the Soviet Union, hopefully leading to an agreed transition towards effective non-nuclear defenses that might make possible the eventual elimination of nuclear weapons.²⁹

27. With the discovery of nuclear fission in 1939, it became clear to scientists that certain radioactive materials could be used to make a bomb of unprecedented power. President Franklin Roosevelt created a committee to investigate the possibility. Progress was slow until mid-1942 when the project was placed under U.S. Army control. The entire development effort was ultimately designated the Manhattan Project. Several large research and development facilities were established for the project. The project's scientists and engineers developed an experimental atomic bomb which was detonated on July 16, 1945.

28. Paul Henry Nitze, formerly Deputy Secretary of Defense, was a member of the U.S. Delegation to the SALT talks from 1969 to 1974. Starting in 1981, he led the Delegation to the Intermediate Range Nuclear Forces Negotiations with Russia.

29. Address by Paul H. Nitze, Special Advisor to the President and Secretary of State for Arms Reduction Negotiations, Philadelphia World Affairs Council (Feb. 20, 1985), *reprinted in* OFF. OF PUB. COM., BUREAU OF PUB. AFF., U.S. DEP'T OF STATE, CURRENT POL'Y No. 657 (1985).

Thus for the immediate future the strategic problem is exactly the same as that during the negotiation of SALT I: to achieve nuclear stability by stabilizing the relationship between offensive and defensive arms. In the early 1970's, the primary Soviet concern was to suppress what they thought was an American lead in anti-ballistic missiles (ABM's). The Soviet Union accepted the Five-Year Interim Agreement on Offensive Weapons of 1972³⁰ only when the United States made it clear that it would not agree to the ABM Treaty without the Interim Agreement. Even when the Interim Agreement was signed, the United States issued a formal statement, declaring that the supreme security interests of the nation would be engaged if the Soviet Union failed to agree to the permanent regulation of offensive weapons. In such an event, we said, the ABM Treaty would be abrogated.

There has been grave and altogether legitimate concern about SDI among our allies and other nations whose security depends ultimately on the American nuclear guaranty. They cannot help wondering whether the United States is seeking to immunize itself from the nuclear plague, and whether effective American ballistic missile defenses would make the American nuclear umbrella incredible as a protection for any American interests beyond the territories of the United States. By helping to annul the Soviet Union's present first-strike capacity, SDI, if successful, should have precisely the opposite effect. It would thus restore the diminishing credibility of America's promise to retaliate with nuclear weapons in the event of Soviet aggression against vital American interests. The fear, however, is natural. It should be taken seriously, and I trust that the Administration will take it seriously, both through extended consultations and through its offer to make the entire program cooperative.

Some students of the subject raise the question whether the development of Soviet and American defenses would not drive nuclear deterrence back to the even worse form of Mutual Assured Destruction. The question is an important and difficult one, and will have to be met, especially as we examine the cost effectiveness of various alternatives offered by the emerging

30. This interim agreement was the result of SALT I negotiations. See *supra* note 3 and accompanying text.

technology. The dilemma these analysts pose cannot be avoided. It would be even worse, however, if we continued to allow the Soviet Union a free field in developing and deploying ballistic missile defenses. The problem is simply one of many created by the implacable development of technology.

Another Allied concern is whether the development of nuclear defenses would reduce the significance of the independent British and French nuclear forces, or the emergence of Europe as a nuclear political entity.

Again, the answer is that if SDI develops as a cooperative project involving most of our allies, the resulting defenses should enhance the deterrent utility of the British and French forces as well as those of the United States. At the present time, the credibility of the British and French forces is low vis-a-vis the Soviet Union because of the disparity of numbers. If the American nuclear arsenal were neutralized, could the threat to use British and French forces against the Soviet Union significantly influence Soviet decision making since the USSR could retaliate with overwhelming power after any such attack? A successful Allied SDI program could only increase the weight of the British and French forces in world politics.

President Reagan has been ridiculed, and attacked politically, for proposing to cooperate with the Soviet Union in suppressing the nuclear weapon altogether. I, for one, strongly support President Reagan's proposal, however Utopian it may seem today. The nuclear arms race has become an insanity, threatening civilization itself. It can be stopped only by cooperative efforts involving the two nuclear super-powers and the other key nations of the world. The hope behind SDI is that the development of technology will convince the leaders of the Soviet Union that the nuclear equation has become so complex, and contains so many and such mysterious variables, that it can be managed only by the joint efforts of the Soviet Union and the United States in the first instance, and by the major powers of the world ultimately.

A corollary of this thesis should be noted carefully. Cooperative methods for managing the nuclear equation would have to be matched by a Soviet commitment to abide by the rules of the Charter of the United Nations regarding the international use of force. There is no use in having even a good agreement about

nuclear arms if its main effect would be to make the world safe for Soviet aggression achieved by the use of non-nuclear forces.

VI.

The nuclear weapon is transforming the horizons of world politics. It offers hideous prospects and glorious ones as well. The Soviet Union is attempting to use the nuclear weapon as a magic tool for achieving world domination without war. The United States is trying to maintain the system of deterrence and containment which has been the key idea of Western foreign policy since President Truman's time. Beyond that interim goal, America has never stopped trying to persuade the Soviet Union that the terrors of nuclear weapons leave nations no alternative but peace.

As the accelerating pressure of Soviet expansion increases the vulnerability of the state system and of the legal norms on which it purports to rest, the world is being forced most reluctantly to confront the nightmare of anarchy. For the first time in many years, scholars, citizens, and politicians alike are beginning to think and talk and write about the problem of order and the functions of law in international society.

Many students of the problem are recommending that the United States retreat from the policies and commitments made during the last forty years, pull our troops, fleets, and airforces out of Europe, the Mediterranean, and the Far East and hunker down at home, as if that option were available to us. They have embraced the illusion that the state system would survive, more or less, as we know it, if we attempted to withdraw to neutrality and isolation as we did in 1919, or to draw a defense line around the industrial democracies, and let the rest of the world go hang. These approaches to foreign policy would be suicidal for the United States, and would almost certainly guarantee devastating war. In the turbulent, contracting, and interdependent world of the late twentieth century, our national security interests, in the most fundamental sense, give us no real choice. The survival of the United States as a polity, and of America as an ideal for humanity, require us to support the achievement of the state system guided by the United Nations Charter. We and the like-minded nations of the world have more than enough power and potential power to fulfill that policy without war. What is re-

quired is simple, but not easy: thought and the will to live by the consequences of our thought.